

1 SCOTT N. SCHOOLS (SCBN 9990)
United States Attorney

2 MARK L. KROTOSKI (CABN 138549)
3 Chief, Criminal Division

4 DEREK R. OWENS (CABN 230237)
5 Special Assistant United States Attorney

6 450 Golden Gate Avenue, 11th Floor
7 San Francisco, California 94102
Telephone: (415) 436-6488
Fax: (415) 436-7234
Email: Derek.Owens@usdoj.gov

8 Attorneys for Plaintiff

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10 UNITED STATES DISTRICT COURT

11 NORTHERN DISTRICT OF CALIFORNIA

12 SAN FRANCISCO DIVISION

13

14 UNITED STATES OF AMERICA,) CR No.: 06-0735 MAG

15)
16 Plaintiff,) STIPULATION AND [PROPOSED]
17 v.) ORDER EXCLUDING TIME AND
18) VACATING TRIAL DATE

19 KENNETH ELLER,)
Defendant.)

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21 On February 26, 2007, the parties in this case appeared for a hearing before the Court, where
22 a pretrial conference was set for March 20, 2007, and a trial was set for April 9, 2007 at 9:00
23 a.m. At the February 26, 2007 hearing the defendant refused to agree to an exclusion of time
24 under the Speedy Trial Act, 18 U.S.C. 3161. Since that hearing the parties have discussed a
25 possible resolution of this case. At this point the parties are agreeing to request two things: 1)
26 vacating the current trial date of April 9, 2007, and converting it to a status hearing or possible
27 change of plea hearing, and 2) an exclusion of time under the Speedy Trial Act calculations from
28 March 9, //

1 2007, through April 9, 2007.

2 The parties hereby stipulate that vacating the trial date would be in the interest of justice, and
3 would conserve judicial resources. This is especially true because the parties are very close to a
4 resolution of the case.

5 The parties further stipulate that time should be excluded from the Speedy Trial Act
6 calculations from March 9, 2007, through April 9, 2007, for effective preparation of defense
7 counsel in the continued plea negotiations, and continuity of defense counsel, as defense counsel
8 will be out of the district from March 9, 2007 through the pretrial conference date. The parties
9 represent that granting the continuance is the reasonable time necessary for effective preparation
10 of defense counsel, taking into account the exercise of due diligence. See 18 U.S.C. §
11 3161(h)(8)(B)(iv). The parties also agree that the ends of justice served by granting such a
12 continuance outweigh the best interests of the public and the defendant in a speedy trial. See 18
13 U.S.C. § 3161(h)(8)(A).

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15 SO STIPULATED:

16 SCOTT N. SCHOOLS
17 United States Attorney

18 DATED: 3/13/2007

/s/ Derek R. Owens

19 _____
20 DEREK R. OWENS
Special Assistant United States Attorney

21 DATED: 03/16/07

/s/ Neil I. Sanders

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23 NEIL I. SANDERS
Attorney for Kenneth Eller

24 The Court hereby orders the trial date in this matter, currently set for April 9, 2007, at 9:00
25 a.m., to be vacated, and further orders the April 9, 2007 hearing to be reset as a status, and/or a
26 change of plea hearing before the Honorable Nandor J. Vadas.

27 For the reasons stated above, the Court finds that an exclusion of time from March 9, 2007,
28 through April 9, 2007, is warranted and that the ends of justice served by the continuance

1 outweigh the best interests of the public and the defendant in a speedy trial. See 18 U.S.C.
2 §3161 (h)(8)(A). The failure to grant the requested continuance would deny defense counsel the
3 reasonable time necessary for effective preparation, taking into account the exercise of due
4 diligence, and would result in a miscarriage of justice. See 18 U.S.C. §3161(h)(8)(B)(iv).

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6 SO ORDERED.

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DATED: 3/20/07

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THE HON. NANDOR J. VADAS
United States Magistrate Court Judge